

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

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| BlueStar Energy Services, Inc. | : | |
| Complainant | : | |
| -vs- | : | |
| Central Illinois Light Company | : | |
| d/b/a AmerenCILCO, | : | |
| Central Illinois Public Service Company | : | |
| d/b/a AmerenCIPS, and | : | 09-0460 |
| Illinois Power Company | : | |
| d/b/a AmerenIP | : | |
| Respondents | : | |
| Verified Complaint for Expedited | : | |
| Declaratory Relief pursuant to 220 ILCS | : | |
| 5/10-108 and 83 Ill. Adm. Rules 200.170, | : | |
| 200.190(d) and 200.220. | : | |

PROPOSED ORDER

By the Commission:

I. INTRODUCTION

On October 20, 2009, BlueStar Energy Services, Inc. ("BlueStar") filed with the Illinois Commerce Commission ("Commission") a verified "Complaint For Expedited Declaratory Relief" against Central Illinois Light Company, d/b/a AmerenCILCO, Central Illinois Public Service Company, d/b/a AmerenCIPS, and Illinois Power Company, d/b/a AmerenIP (collectively Ameren Illinois Utilities("AIU")).¹ BlueStar's complaint alleges that a conflict exists between 83 Illinois Administrative Code 453, "Internet Enrollment Rules" ("Part 453"), and tariffs filed by AIU in compliance with the Order entered in consolidated Docket Nos. 08-0619, 08-0620, and 08-0621. Specifically, BlueStar alleges that a conflict exists between Section 453.40(a)(4), which provides that residential customers may cancel an internet enrollment with an alternative retail electric supplier ("ARES") within 3 business days of entering into a contract, and AIU tariffs that purport to increase that cancellation window to 10 days. BlueStar seeks to have the 10-day cancellation window not apply to residential internet enrollments. The BlueStar filing is an unusual procedural hybrid in that it is identified as both a complaint submitted under Section 200.170 and a request for a declaratory ruling under Section 200.220 of 83 Illinois Administrative Code 200, "Rules of Practice."

¹ Effective October 1, 2010, AmerenCILCO and AmerenIP merged with and into AmerenCIPS, resulting in AmerenCIPS being the sole surviving legal entity. Simultaneously, AmerenCIPS' name was changed to Ameren Illinois Company d/b/a Ameren Illinois.

Pursuant to proper legal notice, hearings were held in this matter before a duly authorized Administrative Law Judge of the Commission at its offices in Springfield, Illinois on December 3, 2009, January 14, 2010, and March 16, 2010. The Administrative Law Judge granted the petition to intervene of the Citizens Utility Board ("CUB"), but CUB did not participate in this proceeding. BlueStar, AIU, and Commission Staff ("Staff") each entered an appearance.

On December 18, 2009, AIU responded to the complaint by filing a "Motion to Dismiss With Prejudice." BlueStar's response to the motion included a cross-motion for judgment on the pleadings. Staff responded to AIU's motion as well. BlueStar offered a reply to Staff's response. AIU replied to BlueStar's response to the motion to dismiss and also responded to BlueStar's cross-motion for judgment on the pleadings. On June 24, 2010, BlueStar offered a supplemental pleading citing Staff testimony on a similar issue relating to Commonwealth Edison Company ("ComEd"). On November 3, 2010, BlueStar filed a motion asking the Commission to take judicial notice of the withdrawal of the proposed amendments to Part 453.

A Proposed Order was served on the parties.

II. BACKGROUND

By way of background, effective November 9, 2007, Public Act 95-0700 amended Section 16-118 of the Public Utilities Act ("Act"), 220 ILCS 5/1-101 et seq., by adding language directing electric public utilities with more than 100,000 customers to file tariffs pursuant to Article IX of the Act establishing utility consolidated billing ("UCB") and purchase of receivables ("POR") service. Section 16-118(c) provides for POR service. Generally under subsection (c), an electric utility must provide ARES with the option to have the electric utility purchase their receivables for power and energy provided to residential and small commercial retail customers. Such receivables are to be purchased at a just and reasonable discount rate, which shall be based on the electric utility's historical bad debt and any reasonable start-up costs and administrative costs associated with the electric utility's purchase of receivables. Subsection (d) addresses UCB. Under subsection (d), an electric utility must provide ARES with the option to have the electric utility produce and provide single bills to retail customers for both the electric power and energy provided by the ARES and the delivery services provided by the electric utility.

On September 30, 2008, each AIU company filed tariffs pursuant to Section 16-118 of the Act to implement a combined UCB-POR service for the benefit of retail customers and ARES. On November 13, 2008, the Commission suspended each of the tariff filings and initiated Docket Nos. 08-0619, et al., which the Administrative Law Judge later consolidated. The Commission entered an Order in the consolidated dockets on August 19, 2009. The tariffs that AIU filed in compliance with the August 19, 2009 Order contain the language troubling BlueStar. Specifically, for example,

AmerenCILCO's Electric Service Schedule III. C. C. No. 18, Supplier Terms and Conditions, Section 11(B)(6) states in relevant part:

If Customer is enrolling to a RES, Company will notify the Customer in writing of the scheduled enrollment and the name of the RES that will be providing power and energy services. If the Customer objects to the pending enrollment, then the Customer may request a rescission of the pending enrollment.

For Mass Market account, the rescission request must be made by the Customer to the Company within ten calendar days of the Company's processing of the enrollment [direct access service request]. If the tenth calendar day falls on a non-business day, then the rescission period shall be extended through the next business day.

(AmerenCILCO, III. C. C. No. 18, 1st Revised Sheet No. 5.039)

As defined in AIU's tariffs, "Mass Market" includes any account containing one or more of only the following types of service points: DS-1, DS-2, and DS-5. (See AmerenCILCO III. C. C. No. 18, 4th Revised Sheet No. 3.008)

III. PARTIES' POSITIONS

A. BlueStar Position

BlueStar insists that this matter is simple and straightforward. Section 453.40(a)(4) provides that residential customers that enroll with an ARES using the internet may cancel their enrollment within three days thereafter. Section 11(B)(6) of AIU's Supplier Terms and Conditions tariff, however, extends the cancellation period to ten days for all enrollment methods. Because a tariff may not circumvent a rule, BlueStar believes that the tariff clearly can not be said to apply to internet enrollments regardless of AIU's statements to the contrary.

BlueStar points out that the tariff language in question was filed in compliance with the Order in Docket Nos. 08-0619, et al. to implement AIU's UCB-POR service as required by Section 16-118(c) and (d) of the Act. Because AIU's proposed tariff language providing ten days for enrollment cancellation was not specifically addressed in the record of Docket Nos. 08-0619, et al., BlueStar suggests that it can not be considered agreed upon language or for that matter knowingly approved by the Commission. Moreover, BlueStar does not utilize either UCB or POR services, but does offer single billing to its customers, whereby it bills for the power and energy it provides as well as the delivery services provided by the electric utility. Section 16-118(b) of the Act addresses single billing by ARES. Because it does not take advantage of AIU's UCB-POR service and did not believe that the tariff provisions at issue in the consolidated UCB-POR dockets would apply to ARES not utilizing AIU's UCB-POR services, BlueStar explains that it did not intervene or otherwise participate in AIU's UCB-POR dockets. BlueStar believes that its decision to not participate in Docket Nos. 08-0619, et al. is justified in light of Footnote 2 in that Order expressly

providing that the single billing option provided for in Section 16-118(b) was not at issue in that proceeding. BlueStar contends that allowing AIU to expand the applicability of the tariffs resulting from its UCB-POR dockets and then preclude ARES from challenging the tariffs because they did not intervene in dockets that they did not expect would impact them is fundamentally unfair.

The Order approving AIU's UCB-POR tariffs also recognized that the Commission's Office of Retail Market Development ("ORMD") would be hosting workshops to discuss consumer education and protection measures. The Order determined further that aspects of consumer education and protection logically tied to existing provisions in AIU's tariffs should be added to the tariffs if consensus could be reached in the ORMD workshops. (See Docket Nos. 08-0619, et al., Order at 47) BlueStar participated in the ORMD workshops, where it opposed efforts to extend the residential enrollment cancellation period to ten days. When the ORMD workshops led to Staff recommending amendments to Part 453, which included extending the three-day cancellation period in Section 453.40(a)(4) to ten days, BlueStar continued to object in that rulemaking proceeding, Docket No. 09-0592. Because the duration of the cancellation period remains contested, BlueStar contends that it should not have been included in AIU's tariffs.

The initiation of Docket No. 09-0592, BlueStar avers, further underscores its position that any change to the existing Section 453.40(a)(4) should, and must, be accomplished in a manner that complies with the formal rulemaking process. Following that process, BlueStar continues, is not a mere technicality, but instead is a legislative requirement that, among other things, guards against the untenable situation that currently exists where there is one rule governing customer cancellation in AIU's territory and a different rule in ComEd's territory. BlueStar notes that AIU points to Docket No. 09-0592 as the proper forum for airing grievances but still wants the conflicting tariff provision to stand while the formal rulemaking proceeds.

In its June 24, 2010 supplemental filing, BlueStar observes that Staff has taken a position in the ComEd UCB-POR docket that is inconsistent with the Staff position in this proceeding on the issue of the cancellation period. BlueStar reports that in his June 10, 2010 testimony, Staff witness Torsten Clausen testifies that the cancellation period "should be first and primarily addressed in a rule that is applicable to customers of both ComEd and AIU. In the event there are additional details that need to be incorporated into each of the utilities' tariffs, those tariff provisions should be filed after the Commission completes [Docket No. 09-0592]." (Docket No. 10-0138, Staff Ex. 1.0, lines 577-581) BlueStar also observes that Mr. Torsten supports resolving any conflict between tariffs and rules in favor of the rules. Had Staff taken a similar position in this proceeding, BlueStar suggests that Staff would have the same objections to AIU's tariffs that BlueStar does.

The October 26, 2010 withdrawal of the proposed amendments to Part 453, as noted in the November 3, 2010 motion, also weighs on this issue, according to BlueStar. With no change to Part 453 imminent, BlueStar asserts that the conflict

between Part 453 and AIU's tariffs remains and should be resolved through this proceeding rather than waiting for the resolution of Docket No. 09-0592.

B. AIU Position

In its motion to dismiss, AIU argues that BlueStar's failure to participate in Docket Nos. 08-0619, et al. effectively resulted in the waiver of its ability to contest the ten-day enrollment cancellation language through this proceeding. In AIU's opinion, BlueStar should investigate more than the mere caption of a docket or general subject matter of a proceeding before it makes a decision with respect to whether a new tariff filing affects its particular business plans. AIU asserts further that public policy disfavors allowing parties to wait until after resolution of suspended tariff proceedings to raise issues related to the approved tariffs. If BlueStar wishes to express concerns about the legal obligations associated with ARES services, AIU suggests that BlueStar do so in Docket No. 09-0592, the rulemaking proceeding stemming from the ORMD workshop process.

AIU further argues that BlueStar did not raise any actionable claims which would cause a reopening of the UCB-POR dockets because there is no conflict between the approved tariffs and the Commission rule. AIU believes the rule is not a restriction on utilities or their ability to establish a rescission period, since utilities are required to file tariffs specifying the parameters of the billing relationship with ARES and Part 453 has no apparent bearing on such relationship. AIU insists that the rule is there to protect the customer from fraud and the utility from mishaps and the tariff establishes procedures for dealing with such. AIU also notes that it has no means of knowing how an ARES enrolled a customer, whether it be by internet or otherwise.

AIU understands that all provisions of Section 16-118 address billing for residential and small commercial customers, or "mass market" customers, that take supply service from an ARES. Just as the legislature placed all provisions regarding mass market billing for ARES customers within one statute, AIU states that it placed all procedures and business process rules within common tariff provisions. AIU states that mass market customer billing and service administration requires automation, standardization, and uniformity. By creating commonly applicable rules, such as a cancellation period, AIU states that it can minimize costs, reduce complexity, and eliminate disparate treatment of customers who may accept different varieties of third-party services. Moreover, AIU continues, it establishes a common set of rules for participating ARES.

C. Staff Position

Staff concurs with the AIU and supports the motion to dismiss. Staff believes the Commission is not prohibited from approving tariffs regulating the utility and ARES business relationship. Furthermore, Staff contends that the three-day cancellation period in Section 453.40 is not the maximum for cancellation periods.

Staff finds the Consumer Fraud and Deceptive Business Practices Act ("CFA"), 815 ILCS 505/1 et seq., relevant to the issue at hand. Staff also cites various statutory construction canons and applies them to the CFA, Part 453, and AIU's tariffs. Because the Commission's Order in Docket Nos. 08-0619, et al. approving the ten-day cancellation period is both more recent and more specific, Staff states that it controls over the three-day period contained in the more general CFA. (Staff Response to Complaint and Motion to Dismiss at 6)² Staff states further that if a conflict is found between AIU's tariff concerning ARES and Part 453 concerning ARES, then a conflict must also exist between the CFA and those provisions of the Act concerning alternative gas suppliers.

Staff believes that BlueStar had a duty to affirmatively protect its interest in a timely manner. Staff agrees with AIU that BlueStar's failure to contest the ten-day cancellation period in the UCB-POR dockets resulted in a waiver of its right to contest the provision now. Staff believes BlueStar had sufficient notice to contest the provision more than a year prior to entry of the Order in Docket Nos. 08-0619, et al. Staff is unsure how there would be any confusion on where rescission would be addressed because the rescission period is covered in a section separate from the UCB-POR program which focuses solely on enrollments and terminations for customers. In addition, Staff observes that those sections do not specifically focus on internet enrollment because the utility does not know what manner the customer uses to enroll. BlueStar did not have to wait until the tariffs were filed to address concerns on the cancellation period, as they could have been addressed in the workshops BlueStar participated in. Staff states that it distributed various documents as well as held conference calls and meetings on cancellation and its applicability to participants, including BlueStar. In those discussions, Staff consistently recommended the inclusion of the cancellation process in the tariffs, not knowing there would be a rulemaking ordered by the Commission. Staff contends that this history supports the argument that BlueStar had notice by the time AIU filed the proposed UCB-POR tariffs in September 2008, and because BlueStar had notice, Staff maintains that it should have intervened in Docket Nos. 08-0619, et al.

Staff reiterates that the ten-day cancellation period was a part of AIU's original proposed UCB-POR tariffs. The Order entered in Docket Nos. 08-0619, et al. includes the ten-day cancellation provision. If the Commission wanted to have the provision addressed further, Staff states that it would have explicitly denied that provision. For BlueStar's argument to have merit, Staff believes that it would imply that the Commission was not fully aware of the provisions in the tariffs.

IV. COMMISSION CONCLUSION

The Commission is inclined to agree with BlueStar that resolution of this matter is rather straightforward. Section 453.40(a)(4) provides that residential customers who enroll with an ARES through the internet "may cancel the enrollment within 3 business

² Staff does not cite a specific CFA provision containing a three-day cancellation period, so Staff's basis for its assertion is unclear to the Commission.

days after the Internet enrollment." AIU's tariff language, however, provides that a residential customer, regardless of how it enrolled with the ARES, may cancel the enrollment with the ARES by making such a request to AIU "within ten calendar days of the Company's processing of the enrollment." These provisions are clearly inconsistent with regard to residential internet enrollments with an ARES.

The fact that the UCB-POR tariffs were accepted following the conclusion of Docket Nos. 08-0619 et al. is without consequence. The adoption of any tariff provision that is inconsistent with a rule must be considered an oversight. Allowing tariff provisions to override or "trump" Commission rules simply because the tariff is more recent would upend the regulatory structure. Effective tariffs must be within the confines of existing Commission rules (absent a waiver granted under a particular rule). If a rule is in need of revision, the rulemaking process exists for that purpose.

Furthermore, the fact that BlueStar did not participate in Docket Nos. 08-0619, et al. is not determinative of the outcome. Although the cancellation period was contested in the ORMD workshops, which BlueStar participated in; the cancellation period was not raised on the record in AIU's UCB-POR dockets. Generally the Commission agrees that entities weighing their interest in a proceeding should do more than just read the caption of a proceeding before deciding whether to intervene. In this instance, however, nothing in the cover letter accompanying AIU's proposed UCB-POR tariffs or the Suspension Order associated therewith indicate that any tariff provisions beyond those necessary to implement a UCB or POR program would be at issue. BlueStar's decision to not participate in Docket Nos. 08-0619, et al. can not be said to be unreasonable.

Staff's position in the analogous ComEd docket under Section 16-118(c) and (d) is curious as well. As BlueStar suggests, Staff's position on the cancellation period in the ComEd docket seems contrary to what Staff has argued in this proceeding. The Commission is also puzzled by Staff's reference to the CFA. While the CFA is certainly relevant to issues pertaining to consumer protection, the Commission does not see how it directly concerns the question at hand.

Even if Part 453 is ultimately revised to provide for a ten-day cancellation period, in light of the status of Docket No. 09-0592, any potential revision is not in the near future. Accordingly, the Commission finds in favor of BlueStar. AIU must revise the inconsistent aspects of its electric tariffs in so far as they relate to internet enrollments by residential customers with ARES. The Commission recognizes that AIU does not currently have a means of knowing how a residential customer enrolls with an ARES (whether it be by internet, telephone, or otherwise). The Commission therefore directs BlueStar and AIU to cooperate in developing a simple method of identifying internet enrollments. AIU should submit its revised tariffs in compliance with this Order within 14 calendar days from the entry of this Order.

V. FINDINGS AND ORDERING PARAGRAPHS

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) BlueStar is an ARES in the State of Illinois within the meaning of Section 16-105 of the Act;
- (2) AmerenCILCO, AmerenCIPS, and AmerenIP (now known as Ameren Illinois Company) are public utilities within the meaning of the Act;
- (3) the Commission has jurisdiction over the parties hereto and the subject matter hereof;
- (4) the recitals of fact set forth in the prefatory portion of this Order are supported by the record and are hereby adopted as findings of fact;
- (5) AIU's electric tariff language pertaining to the cancellation period for internet enrollment by residential customers with an ARES is inconsistent with Part 453;
- (6) AIU should be required to submit tariff language in compliance with Part 453 within 14 calendar days of the entry of this Order, with an effective date no earlier than three business days after the filing of the tariffs, providing Staff the opportunity to review the tariffs before becoming effective; and
- (7) all motions, petitions, objections, or other matters in this proceeding that remain unresolved should be resolved consistent with the conclusion contained herein.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that Central Illinois Light Company, d/b/a AmerenCILCO, Central Illinois Public Service Company, d/b/a AmerenCIPS, and Illinois Power Company, d/b/a AmerenIP, now known as Ameren Illinois Company, shall file within 14 calendar days of the entry of this Order revised electric tariffs relating to the cancellation of internet enrollments by residential customers with alternative retail electric suppliers, as set forth in the prefatory portion of this Order and Finding (6).

IT IS FURTHER ORDERED that all motions, petitions, objections, or other matters in this proceeding that remain unresolved are hereby resolved consistent with the conclusion contained herein.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED: March 4, 2011

Briefs on Exceptions must be received by March 16, 2011.

Briefs in Reply to Exceptions must be received by March 23, 2011.

John D. Albers
Administrative Law Judge